

1 JOHN O'CONNOR  
 2 O'Connor & Associates  
 3 One Embarcadero Center, Suite 1020  
 4 San Francisco, CA 94111  
 5 Telephone: 415-693-9960  
 6 Facsimile: 415-981-0222

7 BRUCE A. SINGAL  
 8 MICHELLE R. PEIRCE  
 9 DAMIEN C. POWELL  
 10 Donoghue, Barrett & Singal, P.C.  
 11 One Beacon Street  
 12 Boston, MA 02108  
 13 Telephone: (617) 720-5090  
 14 Facsimile: (617) 720-5092

15  
 16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND DIVISION

19  
 20 U.S. SMALL BUSINESS ) NO. 07-03738  
 21 ADMINISTRATION, as Receiver for )  
 22 PROSPERO VENTURES, L.P., )  
 23 Plaintiff(s), )  
 24 )  
 25 v. )  
 26 )  
 27 RAINBOW ENTERPRISES L.P., )  
 28 Defendant(s). )

**DEFENDANT RAINBOW  
 ENTERPRISES L.P.'S RESPONSE  
 TO COMPLAINT FOR BREACH  
 OF PARTNERSHIP AGREEMENT  
 AND DEMAND FOR TRIAL  
 BY JURY**

29  
 30 Defendant Rainbow Enterprises L.P. responds to the numbered paragraphs of the  
 31 Complaint as follows:

32 1. This paragraph sets forth conclusions of law to which no reply is necessary. To  
 33 the extent this paragraph can be read as including factual allegations, those allegations are denied.  
 34  
 35 2. This paragraph sets forth conclusions of law to which no reply is necessary. To  
 36 the extent this paragraph can be read as including factual allegations, those allegations are denied.  
 37  
 38 3. This paragraph sets forth conclusions of law to which no reply is necessary. To  
 39 the extent this paragraph can be read as including factual allegations, those allegations are denied.

1 This paragraph alleges facts that are not within defendant's knowledge.

2 4. Defendant admits the first two sentences in this paragraph. The remainder of this  
3 paragraph sets forth conclusions of law to which no reply is necessary. To the extent this  
4 paragraph can be read as including factual allegations, those allegations are denied.

5 5. Admitted.

6 6. Admitted.

7 7. Admitted.

8 8. Defendant admits the dates and language in this paragraph, but states that the  
9 document speaks for itself.

10 9. Defendant admits the dates and language in this paragraph, but states that the  
11 document speaks for itself.

12 10. This paragraph sets forth conclusions of law to which no reply is necessary. To  
13 the extent this paragraph can be read as including factual allegations, those allegations are denied.

14 11. Defendant is without sufficient knowledge and information concerning the  
15 information contained in Prospero's books and records.

16 12. Admitted.

17 13. Admitted.

18 14. Defendant admits the dates and language in this paragraph, but states that the  
19 document speaks for itself.

20 15. Defendant incorporates his responses as set forth in Paragraphs 1 through 14  
21 above.

22 16. Denied.

23 17. Denied.

24 AFFIRMATIVE DEFENSES

25 FIRST AFFIRMATIVE DEFENSE

26 Plaintiff breached the Implied Covenant of Good Faith and Fair Dealing, by among other  
27 things, failing to provide Prospero an opportunity to cure.

## SECOND AFFIRMATIVE DEFENSE

Plaintiff acted in bad faith and with unclean hands.

### THIRD AFFIRMATIVE DEFENSE

Plaintiff is estopped from enforcing the contract because, among other reasons, it took actions and made statements that were relied on by Prospero and defendant to their detriment.

#### FOURTH AFFIRMATIVE DEFENSE

Plaintiff breached its fiduciary duties.

**FIFTH AFFIRMATIVE DEFENSE**

SBA regulations (13 C.F.R. § 107.500 et. seq.), which are incorporated into the contract and which were relied on by SBA, are invalid because they do not further the purpose of the SBIC statute (15 U.S.C. §§ 661-697g).

## SIXTH AFFIRMATIVE DEFENSE

SBA regulations are vague, ambiguous and unenforceable under the due process clause of the United States Constitution.

## SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate its damages.

## EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's actions are ultra vires.

Dated: October 18, 2007

## O'CONNOR & ASSOCIATES

By:

John O'Connor  
Attorneys for Defendant,  
RAINBOW ENTERPRISES L.P.

DONOGHUE, BARRETT & SINGAL, P.C.  
Bruce A. Singal  
Michelle R. Peirce  
Damien C. Powell  
Attorneys for Defendant,  
RAINBOW ENTERPRISES L.P.